

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMAAR SEGAR, an individual,

Plaintiff,

v.

ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY, a foreign
insurance company,

Defendant.

Case No. 2:21-cv-01526-JLR

ALLSTATE’S MOTION TO COMPEL

NOTE ON MOTION CALENDAR:

September 2, 2022

I. INTRODUCTION & RELIEF REQUESTED

Plaintiff was in a September 2015 car accident he claims resulted in a variety of significant and ongoing physical and emotional injuries that he alleges adversely impacted and limits his daily life. He asserts wide-ranging general and specific damages as a result of his injuries, including loss of enjoyment of life, adverse impact on his job and relationships with his family and friends, and inability to engage in hobbies, recreational/leisure, and social activities. Allstate is Plaintiff’s underinsured motorist (“UIM”) insurer. This is an action to recover UIM benefits from Allstate for Plaintiff’s alleged injuries and damages caused by the accident. Accordingly, causation for, and the nature, extent, and severity of, Plaintiff’s alleged injuries and the nature, extent, and amount of his alleged damages are the primary issues in this litigation.

1 Allstate served discovery seeking the identity of all of Plaintiff's medical providers
2 from January 1, 2010 to the present to fully understand his past and current medical history in
3 order to test, challenge, and refute his claimed car accident injuries. Plaintiff balked and only
4 disclosed his *post-accident* providers he self-selected for a limited time period. Allstate also
5 asked for Plaintiff's emails, texts, photo, videos, and social media content related to,
6 supporting, or refuting his alleged damages and injuries as well as those same materials relating
7 to the car accident, Allstate, and his UIM claim. Plaintiff again balked and has not produced
8 any such materials. Allstate even offered—at its own expense—to retain an e-discovery
9 vendor to retrieve and produce such materials from Plaintiff's devices and accounts. Plaintiff
10 again balked and unreliably claimed he already looked at found nothing.

11 The information and emails, texts, photos, and social media Allstate seeks is plainly
12 relevant and discoverable based on the nature of Plaintiff's alleged injuries and damages and
13 issues in this lawsuit. And, Allstate has offered to complete this discovery at no burden or cost
14 to Plaintiff. Any privacy concerns either fall flat because Plaintiff has opened the door to this
15 discovery or can easily be addressed via a protective order or confidentiality agreement
16 between the parties.

17 Accordingly, Allstate respectfully requests that the Court compel Plaintiff to: (i) fully
18 answer under oath Interrogatory No. 1; and (ii) produce all emails, texts, photos, videos, and
19 social media content responsive to Request for Production Nos. 2-7, 10-14, 17, 19, 20 by
20 making his phone, computer, other devices, email accounts, social media accounts, and cloud
21 accounts available to an e-discovery vendor paid for by Allstate to gather and produce
22 responsive emails, texts, photos, videos, and social media content.

23 **II. STATEMENT OF FACTS**

24 Plaintiff was involved in a September 2015 car accident. He claims the accident
25 caused him lengthy, permanent, and debilitating injuries to his left arm, wrist and hand, neck,
26 shoulder, and left knee. He further claims these injuries continually and adversely impact *all*

1 aspects of his life (*e.g.*, sleep, mood, ADLs, etc.), relationships and activities with his children,
2 family and friends, and hobbies and activities. Declaration of Maureen Mitchell (“Mitchell
3 Decl.”), Ex. H, Interrogatory No. 3, 5, 11-12, 15. Plaintiff alleges wide ranging special and
4 general damages, including pain and suffering, loss of enjoyment of life, problems at his job,
5 emotional distress and irritability, inability to play and interact with his children, loss of
6 relationship with family members, and inability to perform hobbies and leisure activities and
7 engage in family activities. *Id.* He also claims his arm, wrist and hand injuries require future
8 treatment. *Id.*

9 Allstate insured Plaintiff at the time of the accident pursuant to a policy that included
10 underinsured motorist (“UIM”) coverage. Plaintiff recovered \$25,000 from the at-fault driver
11 and \$15,829.03 in personal injury protection (“PIP”) benefits from Allstate. He then demanded
12 Allstate pay him an additional \$100,000, his UIM policy limit. Allstate evaluated the claim
13 and determined he had already been fully compensated by his prior \$40,000 recovery but
14 extended him \$5,223.58 in *Winters* fees as a settlement of the claim. Plaintiff rejected the offer
15 and sued Allstate seeking recovery of his UIM policy limits, and also alleging bad faith, breach
16 of fiduciary duty, negligence, estoppel, and violation of the Insurance Fair Conduct Act,
17 Consumer Protection Act. Dkt. #1-1.

18 The Court dismissed all of Plaintiff’s claims except his claim to recover UIM benefits¹.
19 Dkt. #15. Accordingly, this is now a personal injury/UIM benefits action where the two chief
20 issues are: (1) the nature and extent of Plaintiff’s alleged injuries and whether they were caused
21 by the accident; and (2) what are the nature, extent, and value of Plaintiff’s alleged damages, if
22 any, as a result of his injuries.

23 In February 2022, Allstate served targeted interrogatories and requests for production
24 on those two issues. Mitchell Decl., Ex. A & C. Allstate’s discovery requests asked Plaintiff
25

26 ¹ As UIM insurer, Allstate stands in the shoes of the at-fault driver and is free to be adversarial assert the defenses
of at-fault driver regarding causation, nature, and extent of Plaintiff’s alleged injuries and damages.

1 to identify all of his medical providers and pharmacies from January 1, 2010 to the present as
2 well as produce his medical records from those providers.² *Id.* at Ex. C, Interrogatory No. 1,
3 RFP No. 7. The discovery requests also sought all documents, communications, emails, text
4 messages, photographs, videos, and social media content that:

- 5 • Relate to, support, establish, *refute*, or *negate* Plaintiff's alleged damages from the
6 accident that he seeks to recover in this case from Allstate in the form of UIM
benefits (*Id.* at Ex. C, RFP Nos. 10-14, 17, 19-20);
- 7 • Relate to the car accident and its aftermath, Allstate, Plaintiff's UIM claim, this
8 lawsuit, and the social activities and hobbies Plaintiff claims where adversely (*Id.* at
Ex. C, RFP Nos. 2-6, 17, 19);
- 9 • Social media content that relates to, supports, establishes, *refutes*, or *negates*
10 Plaintiff's alleged damages and injuries and/or relates to the accident or Allstate (*Id.*
at Ex. C, RFP No. 17); and
- 11 • Emails and texts with third parties, family or friends regarding Plaintiff's alleged
12 damages and injuries and/or relates to the accident or Allstate (*Id.* at Ex. C, RFP No.
20).

13 Plaintiff's discovery responses and document production were due March 7, but he
14 failed to respond. Instead, on March 8, he asked for a two-week extension after they were
15 already overdue, which Allstate granted but informed him that any objections he had to the
16 discovery requests were now waived because they were not timely asserted. Fed. R. Civ. P.
17 33(b)(4); Mitchell Decl., ¶¶2-4, Ex. B. Plaintiff then missed his own self-imposed response
18 deadline of March 16 and finally served discovery responses on March 23, only after Allstate's
19 counsel twice more asked for them. Mitchell Decl., ¶¶5-6, Ex. B-C.

20 Plaintiff's interrogatory answers were deficient. In response to Interrogatory No. 1
21 asking for identification of his medical providers since January 2010, Plaintiff only disclosed
22 his medical providers *after* the September 2015 car accident through July 2018 and then only
23 those providers *he unilaterally deemed relevant* within that limited timeframe. *Id.* at Ex. C, H.
24 He did not disclose any of his *pre-accident* medical providers. *Id.* Allstate asked multiple
25

26 ² The parties have already agreed to a medical records release to obtain Plaintiff's medical records. As part of
that, Allstate agreed to pay the cost of the records collection and provide the records to Plaintiff free to charge.

1 times for Plaintiff to disclose all his medical providers, specifically his *pre-accident* providers,
2 but he never did. *Id.* at Ex. D, G. Consequently, Allstate has no *pre-accident* medical records
3 to test whether his purported injuries and conditions pre-existed the accident. Instead, Allstate
4 merely has a Plaintiff-curated set of medical records from Plaintiff-selected providers for
5 September 2015 to July 2018, despite him claiming permanent, ongoing injuries needing future
6 treatment.

7 Plaintiff's document production was equally deficient. Here produced 356 pages of
8 materials, most of which were documents and medical records Allstate already had. *Id.* at ¶ 7.
9 Importantly, he **did not produce and has not produced any** emails, texts, photos, videos, or
10 social media content responsive to the requests for production, despite them expressly calling
11 for such materials regarding plainly relevant and discoverable topics (*e.g.*, his alleged injuries
12 and damages, the accident, his UIM claim, etc.).³ *Id.* at Ex. C & H. In fact, Plaintiff at first
13 refused to even disclose his social media accounts, but later relented and disclosed he has
14 active Facebook, Instagram, and LinkedIn accounts. *Id.* at Ex. H.

15 Allstate's counsel sent Plaintiff's counsel a detailed letter explaining the deficiencies in
16 Plaintiff's discovery responses and document production and asked for supplementation. *Id.* at
17 Ex. D. Counsel then conducted two telephonic discovery conferences and resolved many of
18 the issues via supplemental written interrogatory answers. *Id.* at ¶¶ 8-9, 12, Ex. F & H.
19 However, the parties still disagree regarding the sufficiency of Plaintiff's answer to
20 Interrogatory No. 1 and his document production, thus necessitating this motion. *Id.* at ¶¶ 13-
21 17, Ex. G-H.⁴

22 Allstate offered to retain and pay for an e-discovery vendor to locate, gather, and
23 produce responsive emails, texts, photos, videos, and social media content from Plaintiff's

24 ³ Plaintiff made a supplemental production of some photographs of the cars after the accident.

25 ⁴ The undersigned counsel certifies that Allstate has conferred in good faith with Plaintiff's counsel, as detailed in
26 the accompanying declaration, but has been unable to resolve the discovery disputes addressed in this motion.
Mitchell Decl., ¶ 18.

1 phone, computer, Gmail account, cloud accounts, and Facebook, Instagram, and LinkedIn
2 accounts.⁵ *Id.* at ¶¶ 9-10, 13-17, Ex. E & G. Plaintiff balked at this reasonable offer. *Id.*
3 Importantly, Plaintiff has never claimed the emails, texts, photos, and social media Allstate
4 seeks is not relevant and discoverable. Nor can he given the nature of his alleged injuries and
5 damages and Allstate’s discovery requests. Instead, he has tried to avoid production via
6 logistical and procedural challenges, ignoring the fact that Allstate’s offer to retain and pay for
7 an e-discovery vendor ameliorates those purported issues.

8 Plaintiff thinks his lack of production is absolved because he provided a clearly lawyer-
9 drafted declaration claiming he searched his phone, computer, email, and social media accounts
10 for responsive materials and found nothing. *Id.* at Ex. I. Beyond it being unbelievable he has
11 no such materials, Plaintiff’s declaration is conspicuously devoid of any details regarding what
12 search he did, how he did it, and what date ranges he used. *Id.* More vaguely, Plaintiff
13 asserted that he “searched for any matter that is relevant to any party’s claim or defense,”
14 which purportedly included matters related to claimed injuries, doctor visits, prior injuries and
15 doctor visits, and “activities I have engaged in before and after the accident.” Cryptically,
16 Plaintiff stated that “[t]he above-mentioned personal email and social media accounts are the
17 only accounts I *actively* use.” In other words, his supposed “search” is largely unknown and
18 entirely unreliable and using an e-discovery vendor paid for by Allstate at no cost to Plaintiff—
19 as previously offered—is the only reliable way to ensure accounts and devices are properly
20 searched and responsive material retrieved and produced.

21 This motion merely asks the Court to order the Plaintiff to: (a) disclose all his medical
22 providers from January 1, 2010 the present so Allstate can collect medical records from them
23 and provide them to Plaintiff free of charge; and (b) make his cell phone(s), computer(s), other
24

25 ⁵ The e-discovery vendor can collect all the data from Plaintiff’s devices and email and social media accounts
26 entirely remote without Plaintiff leaving his house or being without his phone or computer for any period of time.
The vendor would send him a laptop via Fedex that he connects his devices to, and the data is extracted. For email
and social media, he only has to give the vendor his login credentials and the vendor can then download the
material for the specified date range.

1 devices, email accounts, social media accounts, and cloud accounts available to an e-discovery
2 vendor paid for by Allstate to gather and produce emails, texts, photos, videos, and social
3 media content responsive to Allstate’s discovery requests on the core issues in this case.

4 III. AUTHORITY & ARGUMENT

5 A. Federal Rule of Civil Procedure 26(b) Provides for Broad Discovery.

6 The scope of discovery under Rule 26 is broad. *Fox v. State Farm Ins. Co.*, No. C15-
7 535-RAJ, 2016 WL 304784, at *1 (W.D. Wash. Jan. 26, 2016). “Parties may obtain discovery
8 regarding any nonprivileged matter that is relevant to any party’s claim or defense and
9 proportional to the needs of the case” Fed. R. Civ. P. 26(b)(1). Relevant information
10 need not be admissible to be discoverable. *Id.* A motion to compel is proper where a party
11 fails to answer an interrogatory or fails to produce responsive documents. Fed. R. Civ. P.
12 37(a)(3). “[A]n evasive or incomplete disclosure, answer, or response must be treated as a
13 failure to disclose, answer, or respond.” Fed. R. Civ. P. 37(a)(4).

14 B. Plaintiff’s Objection to Allstate’s Discovery Requests Are Waived.

15 Failure to assert discovery objections in a timely manner results in waiver of those
16 objections. Fed. R. Civ. P. 33(b)(4) (“Any ground not stated in a timely objection is
17 waived”). *See also Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473
18 (9th Cir. 1992) (“It is well established that a failure to object to discovery requests within the
19 time required constitutes a waiver of any objection.”); *Arch Ins. Co. v. Safeco Ins. Co. of Am.*,
20 No. C18-1591-JCC, 2019 WL 6617500, at *2 (W.D. Wash. Dec. 5, 2019) (holding that
21 plaintiff waived any objections to defendant’s discovery requests by failing to provide
22 responses within 30 days of service).

23 Here, Allstate served Plaintiff with discovery requests on February 3, 2022, which
24 means his responses and objections were due March 7. He did not respond by that time and did
25 not request an extension before the deadline. Mitchell Decl. ¶¶ 2-3. Rather, on March 8, after
26 Plaintiff’s discovery responses were already overdue, Plaintiff’s counsel asked for an extension

1 to March 16, which Allstate's counsel granted, but informed her that Plaintiff's objections were
2 already waived as untimely. *Id.* at ¶¶ 3-4. Plaintiff then missed their own self-imposed
3 deadline and finally served discovery responses on March 23, only after further asking by
4 Allstate's counsel. *Id.* at ¶¶ 5-6, Ex. C. Nonetheless, Plaintiff still asserted various objections
5 in his written responses. *Id.* at Ex. C.

6 Plaintiff's objections to Allstate discovery requests were waived when he did not timely
7 assert them on or before March 7. *Supra.* Accordingly, this Court should follow the express
8 terms of Fed. R. Civ. P. 33(b)(4) and settled case law, and deem Plaintiff's objections waived
9 and not entertain them as a basis to oppose and/or not grant Allstate's motion to compel.

10 **C. Plaintiff Must Disclose All his Medical Providers from January 1, 2010 to**
11 **the Present and Produce Records From Those Providers.**

12 Interrogatory No. 1 asks Plaintiff to identify all of his medical providers and pharmacies
13 from January 1, 2010, to the present while Request for Production No. 7 asks him to produce
14 all his medical records for that same period of time from those providers. Mitchell Decl., Ex. C.

15 Plaintiff, however, has only disclosed his medical providers *after* the September 2015
16 car accident through July 2018 and then only those providers *he unilaterally deems relevant*
17 within that limited timeframe. This plainly does not fully answer Interrogatory No. 1. Despite
18 multiple requests, and the interrogatory squarely asking for it, Plaintiff has never disclosed his
19 medical providers from *before* the accident, his providers since July 2018, or any of his other
20 medical providers during the requested time period he may have seen for treatment other than
21 what he deems relevant. Accordingly, Allstate has none of Plaintiff's pre-accident medical
22 records and no medical records after July 2018, despite him claiming permanent and ongoing
23 injuries.⁶

24 It is simply unbelievable that Plaintiff did not see a single medical provider from
25 January 2010 to September 2015, and from July 2018 until the present. Rather, Plaintiff is

26 ⁶ Allstate does have one medical record from September 2019, but nothing beyond that, no medical records
between July 2018 and September 2019.

1 plainly hiding his medical providers and conditions to prevent full and fair discovery of the
2 same. Plaintiff's medical history, injuries, and conditions are of central importance in this case
3 and Allstate is therefore entitled to a complete picture of his medical history before and after
4 the accident to test and defend against causation and his alleged wide-ranging past and ongoing
5 damages, physical injuries, disabilities, and conditions purportedly impacting various aspects
6 of his life. Such a picture is necessarily incomplete because of Plaintiff's arbitrary and
7 improper disclosure of only certain providers.

8 Indeed, "[t]he purpose of discovery is to make trial 'less a game of blind man's bluff
9 and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent
10 possible.'" *Anderson v. Fresno County*, No. 1:05-CV-1325-TAG, 2007 WL 1865657, at *6
11 (E.D. Cal. June 28, 2007) (quoting *United States v. Procter & Gamble Co.*, 356 U.S. 677, 683
12 (1958)); *see also Wilkerson v. Vollans Auto., Inc.*, No. C08-1501-RSL, 2009 WL 1373678, at
13 *1 (W.D. Wash. May 15, 2009) ("One of the primary purposes of discovery is to uncover the
14 facts on which your opponents' claim or defense is based: such facts are clearly
15 discoverable.").

16 Allstate's pursuit of Plaintiff's medical providers and records is not a fishing expedition
17 nor overly burdensome—Allstate will handle the collection, pay the cost of obtaining all of the
18 medical records, and give them to Plaintiff for free, he does not have to pay a penny or do a
19 thing, other than disclose *all* his medical providers from January 1, 2010 to the present.⁷

20 Accordingly, like other courts in this District, this Court should order Plaintiff to
21 disclose all his medical providers from January 1, 2010 to the present, and allow for Allstate to

22 ⁷ Although Allstate is only seeking providers and records 5 years before the accident, courts have frequently
23 allowed discovery of a plaintiff's medical records as far back as ten years before an accident where, as here, such
24 records are relevant. *See, e.g., Putterman v. Supreme Chain Logistics, Ltd.*, C18-376-RSM, 2018 WL 6179325, at
25 *3–4 (W.D. Wash. Nov. 27, 2018) (rejecting plaintiff's argument to limit discovery of medical records to three
26 years before accident and ordering plaintiff to produce medical records ten years before accident to present);
Mears v. Safeco Ins. Co. of Ill., 888 F. Supp. 2d 1048, 1064 (D. Mont. 2012) (finding plaintiff's medical records
concerning his physical health ten years prior to car accident "will help Safeco evaluate [plaintiff's] pre-accident
medical condition"); *Melendez v. Gulf Vessel Mgmt., Inc.*, C09-1100 MJP, 2010 WL 2650572, at *1 (W.D. Wash.
July 1, 2010) ("Both the identities of all medical providers who treated [plaintiff] in the last ten years and the
medical records from those providers are relevant.").

1 obtain his medical records from all those providers. *See Maurice v. Allstate Ins. Co.*, 2:19-CV-
2 1837-JCC-DWC, Dkt. #50 at p. 3 (W.D. Wash. 2020) (ordering disclosure of all of Plaintiff’s
3 medical providers and records; “Plaintiff’s entire medical history from January 1, 2006 to the
4 present is relevant and discoverable”); *Coppinger v. Allstate Ins. Co.*, C17-1756-JCC, Dkt. # 43
5 at p. 2-3 (W.D. Wash. 2019) (ordering disclosure of Plaintiff’s medical providers records for
6 the five years preceding the accident).

7 **D. Plaintiff Must Produce Responsive Emails, Texts, Photos, Videos, and**
8 **Social Media from His Various Accounts and Devices.**

9 The emails, texts, photos, videos, and social media content Allstate seeks from Plaintiff
10 are certainly relevant and discoverable given the nature of his alleged injuries and damages.
11 And Allstate’s proposal to obtain these materials places no cost or burden on Plaintiff.
12 Nonetheless, he refuses in the face of settled and basic discovery law and principals as well as
13 multiple Courts in this District ordering the discovery Allstate seeks.

14 Plaintiff has an affirmative duty under Rule 34 to “conduct a diligent search and
15 reasonable inquiry” in order to obtain documents and communications responsive to Allstate’s
16 discovery requests. *Hawkins v. Kroger Co.*, No. 15-CV-2320-JM-BLM, 2019 WL 4416132, at
17 *8 (S.D. Cal. Sept. 16, 2019) (emphasis added). This duty requires Plaintiff to search “all
18 sources reasonably likely to contain responsive documents.” *Estate of Moreno v. Corr.*
19 *Healthcare Cos., Inc.*, No. 4:18-CV-5171-RMP, 2020 WL 5739747, at *3 (E.D. Wash. Jan. 8,
20 2020) (citation omitted, emphasis added). Plaintiffs must conduct “a thorough search—not just
21 a convenient one—with due diligence.” *Strategic Partners, Inc. v. FIGS, Inc.*, No. CV-19-
22 2286-GW-KSX, 2020 WL 2527056, at *7 (C.D. Cal. Feb. 6, 2020).

23 Plaintiff also has a duty to provide materials responsive to Allstate’s discovery requests,
24 even if those materials refute or undermine his alleged injuries and damages. “Producing only
25 those documents that are deemed helpful to the producing party’s litigation position—parsing
26 out the bad from the good—is, of course, impermissible.” *Novelty, Inc. v. Mountain View*
Mktg., Inc., 265 F.R.D. 370, 378 (S.D. Ind. 2009); *see also Power Home Solar, LLC v. Sigora*

1 *Solar, LLC*, 339 F.R.D. 64, 90 (W.D. Va. 2021) (“[E]ven if the evidence tends to prove
2 Defendants’ claims, [Plaintiff] may not simply opt to hide the ball.”).⁸

3 Plaintiff’s refusal to produce his emails, texts, photos, videos, and social media relating,
4 supporting, or refuting his damages or otherwise relating to the car accident, Allstate, and his
5 UIM claim is deficient under these standards. He cannot, on the one hand, claim significant
6 and debilitating personal injuries and wide-ranging damages to all aspects of his life, and then,
7 on the other hand, deny Allstate’s legitimate discovery into those topics to test his claims and
8 mount a defense to the same.⁹

9 Indeed, multiple Courts in this District have recently ordered Plaintiffs in UIM cases
10 like this one to produce the very emails, texts, photos, videos, and social media content Allstate
11 seeks from Plaintiff here. *See, e.g., Hinrichs v. Allstate Ins. Co.*, No. 221CV00080RAJBAT,
12 2021 WL 3053208, at *4 (W.D. Wash. July 20, 2021) (allowing an e-discovery vendor to
13 access Plaintiff’s electronic devices and online accounts to retrieve, download, and produce her
14 social media, texts, emails, photos, and videos responsive to Allstate’s requests for production);
15 *Maurice v. Allstate Ins. Co.*, No. 2:19-CV-1837-JCC-DWC, 2020 WL 4339256, at *5 (W.D.
16 Wash. July 28, 2020) (authorizing Allstate to hire a third-party e-discovery service to access
17 the plaintiff’s devices and accounts and locate and produce responsive materials); *Aspin v.*
18 *Allstate Prop. & Cas. Ins. Co.*, No. C19-1604RSL, 2020 WL 1523250, at *2 (W.D. Wash. Mar.
19 30, 2020) (Plaintiff “shall provide whatever access is necessary so that defendant can locate
20 and copy the relevant information” from Plaintiff’s devices and accounts); *Coppinger v.*

21
22 ⁸ *See also Yelton v. PHI, Inc.*, 279 F.R.D. 377, 384 (E.D. La. 2011) (noting the “broad duty of disclosure extends
23 to all documents that fit the definition of relevance for the purposes of discovery—whether the documents are
good, bad, or indifferent”); *Danis v. USN Comme’ns, Inc.*, 2000 WL 1694325, at *1 (N.D. Ill. Oct. 20, 2000)
24 (“Suffice it to say, there is no ‘bad document’ exception to the[] duties of preservation and production.”).

25 ⁹ *See Pepin v. Wisconsin Cent. Ltd.*, No. 2:19-CV-00042, 2020 WL 12432395, at *4 (W.D. Mich. Dec. 22, 2020)
26 (“Plaintiff’s own statements – whether stored in emails, text messages or written documents – regarding the
incidents in the case, his resulting injuries, limitations he has experienced as a result, and his damages are relevant
to the case.”); *Lawrence v. Rocktekn CP LLC*, No. CV 16-821, 2017 WL 2951624, at *1 (W.D. La. Apr. 19, 2017)
(overruling objections and concluding “that emails, text messages, photographs, and videos that refer to, relate to,
or depict the accident, damages, injuries, and the like are highly relevant to this case”).

1 *Allstate Ins. Co.*, No. C17-1756-JCC, 2019 WL 13198861, (W.D. Wash. Feb. 26, 2019)
2 (ordering production of social media, emails, texts, photos, and videos regarding Plaintiff's
3 alleged injuries, damages, vacations, and social activities from before and after the accident).

4 This Court should do the same and also reject Plaintiff's conclusory and vague
5 declaration claiming he looked for these materials and found nothing. His declaration is not
6 believable and lacks any requisite detail about his supposed search to trust it. Allstate's offer to
7 pay for an e-discovery vendor to retrieve and produce these discoverable materials is
8 imminently reasonable, been accepted by multiple courts, negates any cost or burden on
9 Plaintiff, and achieves full and fair discovery any litigant is entitled to. Plaintiff's refusal of the
10 same has no cogent basis; he simply does not want discovery that would undermine his claims
11 and damages.

12 **III. CONCLUSION**

13 Full and fair discovery is the lynchpin of conducting a litigation on the merits. Plaintiff
14 has consistently avoided his discovery obligations, despite Allstate offering to minimize or
15 completely alleviate any burden on him to comply with his obligations. Allstate is entitled to
16 the discovery it seeks in order to adequately defend against Plaintiff's injury and damages
17 claims. The Court should not allow Plaintiff's sword and shield approach to litigation and
18 discovery and instead order him to provide the requested discovery.

19 DATED this 18th day of August, 2022

20
21 **FOX ROTHSCHILD LLP**

22
23 *s/ Bryan J. Case*

24 Gavin W. Skok, WSBA #29766

25 Bryan J. Case, WSBA #41781

26 Jonathan P. Heyl (*admitted pro hac vice*)

Jeffrey R. Whitley (*admitted pro hac vice*)

Attorneys for Defendant

1 **CERTIFICATE OF SERVICE**

2 I certify that I am a secretary at the law firm of Fox Rothschild LLP in Seattle, Washington.
3 I am a U.S. citizen over the age of eighteen years and not a party to the within cause. On the date
4 shown below, I caused to be served a true and correct copy of the foregoing on counsel of record
5 for all other parties to this action as indicated below:

6 <u>Service List</u>	
7 Sarah J. Perez, WSBA #44757 8 Marlene Otero, WSBA #55324 9 PEREZ & PEREZ LAW, PLLC 10 506 2 nd Avenue, Suite 1400 11 Seattle, WA 98104 12 Ph. (425) 748-5005 13 Email: Sarah@PerezandPerezLaw.com marlene@perezandperezlaw.com 14 <i>Attorneys for Plaintiff</i>	<input type="checkbox"/> Via US Mail <input type="checkbox"/> Via Messenger <input checked="" type="checkbox"/> Via CM/ECF / E-filing system / Email <input type="checkbox"/> Via over-night delivery

15 I declare under penalty of perjury under the laws of the State of Washington that the
16 foregoing is true and correct.

17 EXECUTED this 18th day of August 2022, in Seattle, Washington.

18 
19 Marina Krylov